

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
EASTERN DIVISION**

**No. 4:09-MJ-01136**

|                           |   |                     |
|---------------------------|---|---------------------|
| UNITED STATES OF AMERICA, | ) |                     |
|                           | ) |                     |
| v.                        | ) | <b><u>ORDER</u></b> |
|                           | ) |                     |
| MARK RICHARD MARTIN,      | ) |                     |
|                           | ) |                     |
| Defendant.                | ) |                     |

This matter is before the Court on the Government's motion to quash Defendant's pretrial subpoenas. [DE-26.] The two challenged subpoenas were issued on May 11, 2010, to Barry Munyan, Chief Ranger - Cape Lookout National Seashore, and Russell Wilson, Superintendent - Cape Lookout National Seashore. Munyan was served on May 12, 2010, and Wilson was served on May 17, 2010. The motion to quash was filed on May 18, 2010, and the Court held a telephonic hearing on the same day, at which counsel for the Government and the Defendant were heard. This matter is set for bench trial on May 19, 2010. Defendant is charged with a Class B Misdemeanor of driving through turtle nesting closures in violation of 36 C.F.R. § 1.5(f).

The subpoena to Munyan commands that he appear to testify at trial and to produce the following information: "Any and all records, notes and documents concerning the above named defendant, Morris Marina, and Morris Marina Kabin Kamps, Inc." The Government challenges only the portion of the Munyan subpoena requiring him to produce documents on the basis that it is investigative in nature and seeks irrelevant information. The Court agrees that the document request is overly broad, pursuant to Fed. R. Crim. P. 17(c) and *United States v. Nixon*, 418 U.S. 683, 699-700 (1974). At the hearing, Defendant's counsel conceded that the subpoena was overly broad, but

sought modification to limit the document request to documents that provided notice to Defendant as to the parameters of the closures. The Court finds this appropriate and will so modify the subpoena to Munyan.

The subpoena to Wilson commands that he appear to testify at trial and to produce the following information:

Any and all records, notes and documents concerning the above named defendant, Morris Marina, and Morris Marina Kabin Camps and Ferry Service Inc. Additionally, provide written documentation justifying the closures on North Core Banks pursuant to 36 C.F.R. 1.5(f), including but not limited to specific area parameters of each closure on August 27, 2009.


The Government challenges the subpoena in its entirety on the basis that Wilson's testimony and the requested documents would not be admissible. Defendant contends that Wilson's testimony and the documents are necessary to determine the parameters of the turtle nesting closures. The Court agrees with the Government and concludes that Wilson's testimony would not be relevant to the issue of whether Defendant drove through turtle nesting closures in violation of 36 C.F.R. § 1.5(f). The Court will quash the subpoena as to Wilson's appearance and testimony, but modifies the subpoena for document production to limit the document request to documents that provided notice to Defendant as to the parameters of the closures, as allowed with regard to the Munyan subpoena.

### **CONCLUSION**

The Government's motion to quash [DE-26] is **GRANTED IN PART** and **DENIED IN**

**PART** in conformity with the foregoing.

This the 18<sup>th</sup> day of May, 2010.

A handwritten signature in black ink, appearing to read "David W. Daniel", written over a horizontal line.

DAVID W. DANIEL  
United States Magistrate Judge